

US EPA ARCHIVE DOCUMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
COUNCIL BLUFFS)	Docket No. CWA-07-2013-0058
AIRPORT AUTHORITY)	
)	
Respondent)	CONSENT AGREEMENT
)	AND FINAL ORDER
Proceeding under Section 309(a) of the)	
Clean Water Act, 33 U.S.C. § 1319(a))	
_____)	

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Council Bluffs Airport Authority (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22.

2. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent has violated Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and § 1342, and regulations promulgated thereunder. Respondent alleges that these alleged violations were not intentional and resulted from mitigating circumstances.

Parties

3. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of EPA. The Administrator has delegated this authority to the

Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7 (Complainant).

4. Respondent is Council Bluffs Airport Authority, an entity created pursuant to chapter 330A of the 1995 Iowa Code.

Statutory and Regulatory Framework

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

6. The CWA prohibits the discharge of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

7. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) of the CWA, requires, in part, that a discharge of stormwater associated with an industrial activity must conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

8. Pursuant to Section 402(p) of the CWA, EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

9. 40 C.F.R. § 122.26(a)(1)(ii) and 122.26(c) requires dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

10. 40 C.F.R. § 122.26(b)(14)(x) defines “storm water discharge associated with industrial activity,” in part, as construction activity including clearing, grading, and excavation, except operations that result in the disturbance of less than five (5) acres of total land area which are not part of a larger common plan of development or sale.

11. The Iowa Department of Natural Resources (IDNR) is the state agency with the authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

12. IDNR issued a general permit for the discharge of stormwater under the NPDES, General Permit No. 2. The general permit governs stormwater discharges associated with construction or land disturbance activity.

Factual Background

13. Respondent is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. At all times relevant to this action, Respondent was the owner and/or operator of a construction site known as the Council Bluffs Airport annex construction project, located in the City of Council Bluffs, Iowa (“the Site”). Construction activities occurred at the Site including clearing, grading, and excavation of the site as well as the construction of a 5500-foot runway which disturbed eighty-six (86) or more acres of total land area.

15. Stormwater, snow melt, surface drainage and runoff water from the runway area discharges at approximately seven (7) locations and ultimately drains into a tributary of Little Mosquito Creek, while the southern areas drain to a tributary of Pony Creek. The runoff and drainage from the Site is “stormwater” as defined by 40 C.F.R. § 122.26(b)(13).

16. Stormwater contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

17. The Site has “stormwater discharge associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(x), and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

18. Respondent discharged pollutants into “navigable water” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

19. Stormwater runoff from Respondent’s construction Site results in the addition of pollutants from a point source to navigable waters, and thus is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

20. Respondent’s discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(x), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

21. Respondent Council Bluffs Airport Authority applied for and was issued NPDES permit coverage under the general permit described in Paragraph 12 above. IDNR assigned Respondent Council Bluffs Airport Authority Permit No. IA-8347-8245, providing Respondent with NPDES permit coverage through September 30, 2011.

22. Respondent’s permit coverage is for a runway construction project of the Council Bluffs Airport in Council Bluffs, Iowa.

23. The Iowa Department of Natural Resources conducted several site inspections and site visits at the Site since Council Bluffs Airport Authority received NPDES permit coverage. IDNR has to date issued three Notices of Violation to the Council Bluffs Airport Authority.

24. On or about March 16, 2011, an EPA inspector (“Inspector”) performed an inspection of the Site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the inspection was to evaluate the management of stormwater at the Site in accordance with Respondent’s NPDES permit and the CWA.

Alleged Violations

Failure to Install Best Management Practices (BMPs)

25. The facts stated in Paragraphs 13 through 24 above are herein incorporated.

26. Part IV of Respondent’s permit requires that the Respondent develop a plan that shall describe and ensure the implementation of BMPs which will be used to reduce the pollutants in stormwater discharge to ensure compliance with the terms and conditions of Respondent’s permit. Part IV Section D.2 of Respondent’s permit requires that the Respondent’s SWPPP shall include structural practices to divert flows from exposed soils, store flows or otherwise limit runoff from exposed areas of the Site.

27. Part IV, Section D.2, A.1 of Respondent’s permit requires that stabilization measures shall be initiated on all disturbed areas as soon as practical but in no case where construction activity will not occur for a period of 21 or more calendar days later than the 14th day after no construction activity has occurred in such area.

28. Part IV, Section D.2, B.2 of Respondent’s permit requires the installation of velocity dissipation devices at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive velocity flow from the structure to a water course, so that the natural physical and biological characteristics and functions are maintained and protected.

29. The Inspector referenced in Paragraph 24 above, noted that no velocity dissipation device had been installed at the outlet from the east sedimentation basin.

30. The Inspector referenced in Paragraph 24 above, noted that Respondent failed to stabilize the area near the northeast corner of the site which was regarded to restrict flow into the erosion cut of the northeast end of the runaway.

31. Respondent’s failure to install BMPs is a violation of Respondent’s permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and § 1342(p).

Best Management Practices (BMPs) Not Properly Designed, Implemented or Maintained

32. The facts stated in Paragraphs 13 through 24 above are herein incorporated.

33. Part VI, Section M of Respondent's permit requires the permittee, at all times, to properly operate and maintain all systems of treatment and control that are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of the stormwater pollution prevention plan.

34. The Inspector referenced in Paragraph 24 above, noted that Respondent had not adequately maintained silt fencing. Specifically, three consecutive silt fence ditch checks in the drainage channel below the southwest sedimentation basin were undermined. A series of ditch checks in a channel were damaged or were never properly fastened to their supports. Another series of silt fences on the east side of the runway were undermined.

35. The Inspector referenced in Paragraph 24 above, noted that Respondent did not maintain (clean-out) basins. The EPA inspector review of Respondent's inspection revealed sediment accumulation in sediment basins over 80% of the basin's capacity, severely limiting the ability of the basin to capture sediment.

36. The Inspector referenced in Paragraph 24 above, noted that Respondent did not properly design and implement a BMP sufficient to control stormwater discharges from the dramatic erosion cut bordering northeast corner of the safety area of the north end of Runway 18/36. Specifically, Respondent installed a sediment basin that was not sufficient to control discharges from this area. The basin that was installed in December 2009 catastrophically failed in April 2010.

37. Respondent's failure to properly design, implement or maintain BMPs is a violation of Respondent's permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and § 1342(p).

Failure to Develop an Adequate Stormwater Pollution Prevention Plan (SWPPP)

38. The facts stated in Paragraphs 13 through 24 above are herein incorporated.

39. Part IV of the Respondent's permit requires that Respondent develop a SWPPP that shall identify potential sources of pollution which may reasonably be expected to affect the quality of stormwater discharge from the construction activities at Respondent's construction site. The SWPPP shall describe and ensure the implementation of the practices which will be used to reduce the pollutants in stormwater discharge and to assure compliance with the terms and conditions of this permit, including addressing any sedimentation basins or storm water detention basins. The SWPPP shall be retained at the construction site from the date construction activities begin to the date of final stabilization.

40. The Inspector referenced in Paragraph 24 above, noted that Respondent's SWPPP (1) failed to adequately describe BMPs and stormwater management practices by failing to identify locations for the installation of BMPs, particularly silt fences, ditch locations, and locations of temporary sedimentation basins; (2) failed to cover the entire project area; and (3) failed to address basin design and capacity.

41. The Inspector referenced in Paragraph 24 above, noted that Respondent's SWPPP was not available onsite while construction activities were ongoing.

42. The Inspector referenced in Paragraph 24 above, noted a dramatic erosion cut bordering the northeast corner of the safety area at the north end of Runway 18/36. This is a canyon-like crevasse approximately 300-400 feet in length and up to 30-40 feet in depth and breadth. This canyon-like crevasse discharged an excessive amount of sediment offsite. Respondent failed to develop an adequate SWPPP that called for the proper design of BMPs and appropriate installation and maintenance of these BMPs to prevent this excessive erosion.

43. Respondent's failure to develop and implement an adequate SWPPP and to retain the SWPPP at the construction site is a violation of Respondent's permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and § 1342(p).

Failure to Update the SWPPP

44. The facts stated in Paragraphs 13 through 24 are herein incorporated.

45. Part IV Section C of the Respondent's permit requires that Respondent properly implement and adjust the SWPPP "whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants or if the SWPPP proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharge...."

46. The Inspector referenced in Paragraph 24 above, noted that the Respondent's SWPPP had not been thoroughly updated since 2004. The SWPPP is, therefore, not representative of current site conditions. Moreover, the SWPPP had not been updated despite the ongoing noncompliance at the site, particularly the excessive discharge of sediment offsite that has occurred after the date of the SWPPP.

47. Respondent's failure to thoroughly update the SWPPP is a violation of Respondent's permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and § 1342(p).

Failure to Perform and Document Site Inspections

48. The facts stated in Paragraphs 13 through 24 above are herein incorporated.

49. Part IV, Section D.4 of the Respondent's permit requires that qualified personnel inspect areas of the construction site that have not been finally stabilized at least once every seven calendar days and within twenty-four hours of the end of a storm with rainfall that is 0.5 inches or greater. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP and actions taken in accordance with Part IV, Section D.4.B of the permit shall be made and retained as part of the SWPPP for at least three years after final stabilization has been achieved.

50. The Inspector referenced in Paragraph 24 above, noted that there was a period of eighty-eight (88) weeks when no inspections were conducted and documented. Furthermore, the inspection reports that were available for review conveyed little or no useful information about site conditions at the time the inspections were conducted.

51. Respondent's failure to perform and document Site inspections is a violation of Respondent's permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and § 1342(p).

52. Based on the foregoing Alleged Violations, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA, Region 7 hereby proposes to issue a Final Order assessing an administrative penalty against the Respondent for the alleged violations cited above.

CONSENT AGREEMENT

53. Respondent and EPA agree to the terms of the Consent Agreement portion of this CA/FO and Respondent agrees to comply with the terms of the Final Order portion of this CA/FO.

54. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CA/FO.

55. Respondent neither admits nor denies EPA's factual allegations and legal conclusions set forth above.

56. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the Final Order portion of this CA/FO.

57. Respondent and Complainant agree to conciliate the matters set forth in this CA/FO without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

58. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

59. Nothing contained in the Final Order portion of this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

60. This CA/FO addresses all civil and administrative claims for the violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of applicable law.

61. Respondent certifies by the signing of this CA/FO that to the best of its knowledge, Respondent's Site is in compliance with Sections 301 and 402 of CWA, 33 U.S.C. §§ 1311, 1342, and regulations promulgated thereunder.

62. The effect of the settlement described in Paragraph 60 above is conditional upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 61 of this CA/FO.

63. Respondent agrees that, in settlement of the claims alleged in this CA/FO, Respondent shall pay a penalty of \$60,000 as set forth in Paragraph 1 of the Final Order.

64. Respondent understands that failure to pay any portion of the civil penalty on the proper due date may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

FINAL ORDER

Payment Procedures

Pursuant to Section 309(g) of CWA, 33 U.S.C. § 1319(g), and according to the terms of this CA/FO, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a mitigated civil penalty of Sixty Thousand Dollars (\$60,000) within thirty (30) days of the effective date of this Final Order.

2. Payment of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

This payment shall reference docket number CWA-07-2013-0058.

Copies of the check shall be mailed to:

Kristen Nazar
Assistant Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Parties Bound

4. This Final Order portion of this CA/FO shall apply to and be binding upon Respondent and Respondent's agents, successors, or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CA/FO.

General Provisions

5. Notwithstanding any other provision of this CA/FO, EPA reserves the right to enforce the terms of the Final Order portion of this CA/FO by initiating a judicial or administrative action pursuant to Section 309 of CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

6. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this CA/FO.

7. This Order shall be entered and become effective only after the conclusion of the period of public notice and comment required pursuant to Section 309(g)(4) of CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

8. Respondent and Complainant shall bear their respective costs and attorney's fees.

9. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date

Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division

Date

Kristen Nazar
Assistant Regional Counsel
Office of Regional Counsel

RESPONDENT:
COUNCIL BLUFFS AIRPORT AUTHORITY

Date

Name (Print) _____

Title _____

IT IS SO ORDERED. This Final Order shall become effective immediately.

Karina Borromeo
Regional Judicial Officer

Date